

SUBPOENAS AND PUBLIC ACCESS LAWS

Obtaining Public Records

Generally, the Access to Public Records Act (“APRA”) (*I.C. § 5-14-3*) provides that all records maintained by a public agency are public records, but some may be confidential or disclosable at the discretion of the agency. All public records which are not excepted from disclosure must be made available for public inspection and copying upon request. *See I.C. § 5-14-3-3*.

The APRA does not require a requestor to obtain a subpoena to access a record the APRA requires to be disclosed. (*Opinion of the Public Access Counselor 08-FC-28*). Depending on the agency’s preference, either a letter or a form the agency provides is sufficient for a request for access to records. *See I.C. § 5-14-3-3(a)*. For a sample request letter, visit the Public Access Counselor’s website (<http://www.in.gov/pac>) and note the link under the heading of “Resources”.

Litigation

The APRA does not include an exception permitting a public agency to refuse to disclose a record on the basis there is pending litigation between the agency and the person requesting the record. (*Opinion of the Public Access Counselor 08-FC-32*).

If a person requests a record through a subpoena and the agency believes the request is part of the discovery process, the Public Access Counselor should not be involved with the controversy, because courts have jurisdiction over the discovery process. (*Opinion of the Public Access Counselor 08-FC-32*).

If access to public records is an issue in pending litigation, the Public Access Counselor cannot issue an advisory opinion regarding the matter. *See I.C. § 5-14-4-10(6)*.